

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	No. 04-03103-01-CR-S-FJG
)	
ROBERT JOSEPH HARPER,)	
)	
Defendant.)	

REPORT AND RECOMMENDATION

Pending before the Court is defendant's Motion to Dismiss or Strike Indictment. In his motion, he asserts that the additional sentencing allegations are not properly included in the indictment. *United States v. Booker*, 2005 WL 50108. He argues that the additional sentencing allegations should be stricken or the indictment should be dismissed. The United States has filed its response, agreeing that the additional sentencing allegations are surplusage and should be stricken.

Federal Rules of Criminal Procedure 7(d) provides that the proper remedy for surplusage is to simply strike it from the indictment. Because the remaining language is sufficient to charge the offense presented, dismissal of the indictment is not the proper remedy. It is therefore

RECOMMENDED that defendant's Motion to Dismiss or Strike Indictment be granted in part and that the additional sentencing allegations be stricken as surplusage.

/s/ James C. England
JAMES C. ENGLAND
United States Magistrate Judge

Date: May 4, 2005